IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Revision No.496 of 2000

Date of Decision: 24-8-2006

1.Bhai Ram son of Sh.Mukh Ram, aged 73 years resident of Bareli Khurd, Tehsil and District Rewari.
2.Vikram son of Sh.Bhai Ram resident of Village Bareli Khurd, Tehsil and District Rewari.

.....Petitioners

VERSUS

1.Jai Narain son of Mukh Ram resident of Berali Khurd, District Rewari
2.Umed Singh
3.Ved Parkash
4.Sube Singh
5.Udey Singh
sons of Jai Narain, residents of Village Bareli Khurd Tehsil and District Rewari
6.Lalji son of Mani Ram, resident of Village Bareli Khurd District Rewari
7.Rohtash Singh Yadav, Advocate, Rewari
8.Sh.KK Bishnoi, Tehsildar Rewari

.....Respondents

CORAM:- HON'BLE MR.JUSTICE R S MADAN

PRESENT: Mr.PR Yadav, Advocate for the petitioner.

Mr.JS Yadav,Advocate
for respondent No.5.

JUDGMENT

This Criminal Revision Petition have arisen out of the order dated 15-10-1999 passed by the learned Additional Chief Judicial Magistrate, Rewari on a complaint filed by the petitioners under Sections 420/468/471/34 of the Indian Penal Code, which was dismissed by

observing that there exist no ground to proceed against the accused.

In brief the facts of the case are that it is averred in the compliant that the complainant and respondents are residents of Village Bareli Khurd. Jainarain-respondent No.1 is the younger brother of complainant No.I. The grandfather of complainant-Ram Parshad owned land measuring 100 kanals. After the death of grandfather, the land was inherited by his three sons, namely, Mukh Ram, Hans Ram and Sohan Lal. Hans Ram had died issueless in the year 1988 and his land was inherited by his widow Smt.Naniya. Later on she also died. In the same manner, elder brother of Sohan Lal also died in the year 1965, who was having one son Kurda Ram. He was also died issueless in the year 1983. After the death of Hans Ram and Sohan Lal, their 1/3rd share each was inherited by the complainant, his brother Jainarain and his three sisters Malli, Bhangri and Sarbati. The mutation to this effect was also sanctioned. In the share of their father, his mother Smt. Sarbati Devi was having 1/18th share because she was not supposed to inherit the share of Sohan Lal and Hans Ram. Jainarain-respondent with the connivance of Halqa Patwari-Het Ram got 1/6th share of his mother in the Jamabandi for the year 1983-84. The complainant approached the then Tehsildar, Sh.KK Bishnoi and the Deputy Commissioner but no action was taken. His brother Jainarain used to pressurize his mother Singari Devi to gift away the land of her shares in favour of his sons but she refused. The age of his mother was about 105 years. She was hard of hearing and she could not see. By taking advantage of frail condition, Jainarain took her in a car to the premises of Tehsil Rewari and got executed two fraudulent sale-deeds in favour of their sons, one pertaining to Rs.2,00,000/- and the second pertaining to Rs.30,000/- on

9-4-1996 and 17-4-1996 respectively. In this way, he deprived the complainant 12 kanals of land and thereby committed an offence under Sections 420/468/471/34 of the Indian Penal Code. These documents mentioned above were got attested by Lalji son of Mani Ram. He requested Tehsildar not to register the sale deed but to no effect. Since accused No.1 with the connivance of remaining accused got the sale deeds executed and registered from his mother Singari Devi regarding her land which she was not willing to sell in favour of his Jainarain, the accused had committed an offence as mentioned above.

In the complaint, statement of complainant Shri Bhai Ram son of Mukh Ram was recorded on 15-4-1999 and thereafter, the matter was sent for enquiry under Section 202 of the Code of Criminal Procedure to Police Station Jatusana and the report of the police has also come. According to which, it was informed to the Court that Singari was the owner of 1/6th share of land. She sold the land to the sons of Jainarain, namely, Umed Singh, Ved Parkash, Sube Singh and Udey Singh while she was having knowledge in regard to the share, now Singhari Devi has died and Het Lal Patwari has also died and Civil Suit is pending in regard to the land in question in the Court of the Chief Judicial Magistrate, Rewari. No further action is required to be taken. The statements of complainant Bhai Ram and respondent-Jainarain were also sent along with the report.

After considering the report of the police and the statement of Bhai Ram, the learned Additional Chief Judicial Magistrate, Rewari observed that once the sale deeds are produced before Shri KK Bishnoi, the then Tehsildar-cum-Registrar, Rewari, he could not refused to register the sale deed nor he could go into the question of

determining the shares of the parties. No action could be taken against Tehsildar, Rewari-respondent No.8 for want of sanction as under Section 197 of the Code of Criminal Procedure. So far as the Halqa Patwari is concerned, he has already died. Lalji has simply identified the accused Smt. Singari, therefore, no offence is made out. So far as respondent-Rohtash Singh Yadav, Advocate is concerned, it is no where disclosed in the complaint as to what role was played by him, therefore, proceedings as mentioned in the complaint for the commission of offence could not be continued. Lalji-respondent No.6 has only identified Smt. Shingari, therefore, it cannot be said that any foul was played by Lalji-respondent. It has further come on the evidence of the record that the parties have already questioned the validity of the two sale deeds executed by Smt. Singari in favour of sons of Jainarain.

Thus, after making the aforesaid observation, the learned Additional Chief Judicial Magistrate, Rewari dismissed the complaint vide the impugned order, which is challenged in this revision before this Court.

Learned counsel for the petitioners contended that the learned Magistrate was under an obligation to proceed against the accused in accordance with law by holding a regular trial against the accused. At the same time, he admitted the factum that the parties have already knocked the door of the Civil Court to get their grievances redressed. No doubt that the Civil and Criminal proceedings can continue simultaneously but at the same time if it is being used for the misuse of due process of law, the Revisional Court would not act as a silent spectator.

Learned counsel for the petitioners was unable to point out that the learned Additional Chief Judicial Magistrate, Rewari has acted

against the provisions of law as well as his order suffers from any infirmity.

Taking into account the facts and circumstances that the parties have already approached the Civil Court, who get their grievances redressed and only after the decision of the Civil Court, it would be possible for the complainant to know the role played by each of the accused in executing the documents etc.

Thus, there is no force in this revision petition and the same is hereby dismissed.

(R S MADAN)
JUDGE

August 24, 2006
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